



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 15, 1994

Dr. Sylvester B. Walleck
Assistant Superintendent of Business Operations/
Personnel
Calhoun County Independent School District
P.O. Box 68
Port Lavaca, Texas 77979

OR94-344

Dear Dr. Walleck:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Gov't Code, ch. 552 (the "act"). Your request was assigned ID# 23046.

The Calhoun County Independent School District (the "ISD") has received a request for any documents regarding a student's eligibility for free or reduced price lunches in 1991 through 1993. The request is from the student's non-custodial parent. You ask whether this information is protected from public disclosure under section 552.101 of the act in conjunction with federal law.

Free and reduced price lunch programs are administered by the United States Department of Agriculture (the "USDA"). Requirements for free and reduced price lunch programs are governed by federal law. *See* 42 U.S.C. § 1758. Federal law provides that there shall not be "any overt identification of any child by special tokens or tickets, announced or published lists of names, or by other means." *Id.* § 1758(b)(4) (emphasis added). The USDA has interpreted this prohibition broadly to make applications to the program confidential, and has stated that "free and reduced price application information may not be released to anyone, including a non-custodial parent, for non-program purposes." *See* USDA Food and Nutrition Service Southwest Region Memorandum 91-CN-11 (Dec. 27, 1990). Based on the USDA's interpretation of federal law, we conclude that the requested applications are confidential under section 552.101 of the act in

conjunction with the federal provision. Therefore, the requested applications may be released to the requestor only in accordance with the federal provision.¹

We further note that the USDA has reviewed the court order regarding the requestor's right to certain information and has stated as follows:

You recently raised the question about whether or not a school must divulge information on the application for free/reduced price meals to a divorced father as part of the terms of a court order granting him access to "medical, dental and educational records" as well as the right to "consult with school officials concerning the child's welfare and educational status, including school activities."

As you know, our general policy is that estranged spouses do not have the right to review information on an application submitted by the other parent. On the specific case in question, we do not consider applications for free and reduced price meals to be "educational records," and we see no specific mention of access to the information on the application. Moreover, we do not believe that this information would have any bearing on the father's right to consult with school officials about the quality of care and education the child is receiving. It is our opinion, therefore, that the school should continue to deny access to free/reduced price eligibility information.

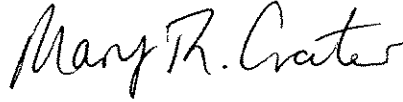
We would also suggest, however, that the food service director consult with the school's attorneys for a more definitive interpretation of the legal status of these records. If the court is insisting that these records be made available, we would advise the school to comply.

Memorandum from Charles Heise, USDA Food and Nutrition Service Headquarters to Rex Carey, USDA Food and Nutrition Service Southwestern Regional Office (May 25, 1994). Because the requested information is confidential under state law and may be disclosed only pursuant to federal law, we suggest that you address any further questions you may have regarding this matter to USDA.

¹Because the USDA takes the position that applications to the program are not "education records" under the federal Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, *see* USDA Food and Nutrition Service Southwest Region Memorandum 91-CN-11 (Dec. 27, 1990), we do not consider the availability of the requested information under that provision.

Because federal law resolves your request, we address it with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script that reads "Mary R. Crouter".

Mary R. Crouter
Assistant Attorney General
Open Government Section

MRC/LRD/rho

Ref.: ID# 23046

Enclosures: Submitted documents

cc: Mr. Douglas P. Ames
P.O. Box 1224
Antioch, Tennessee 37011
(w/o enclosures)